



**QUEEN'S  
UNIVERSITY  
BELFAST**

## **Written submission to: UN Special Rapporteur on violence against women, its causes and consequences on 'The Adequacy of the International Legal Framework on Violence Against Women'**

Brunger, Y., & Dowds, E. (Accepted/In press). *Written submission to: UN Special Rapporteur on violence against women, its causes and consequences on 'The Adequacy of the International Legal Framework on Violence Against Women'*.

### **Document Version:**

Publisher's PDF, also known as Version of record

### **Queen's University Belfast - Research Portal:**

[Link to publication record in Queen's University Belfast Research Portal](#)

### **Publisher rights**

Copyright 2016 The Authors

### **General rights**

Copyright for the publications made accessible via the Queen's University Belfast Research Portal is retained by the author(s) and / or other copyright owners and it is a condition of accessing these publications that users recognise and abide by the legal requirements associated with these rights.

### **Take down policy**

The Research Portal is Queen's institutional repository that provides access to Queen's research output. Every effort has been made to ensure that content in the Research Portal does not infringe any person's rights, or applicable UK laws. If you discover content in the Research Portal that you believe breaches copyright or violates any law, please contact [openaccess@qub.ac.uk](mailto:openaccess@qub.ac.uk).

1 November 2016

**Ref: Submission on the adequacy of the international legal framework**

Dear Ms Šimonović,

In response to your call for submissions by stakeholders on the adequacy of the international legal framework on violence against women initiated previously by the former mandate holder, we are submitting the following views and reflections.<sup>1</sup>

***1. Do you consider that there is a need for a separate legally binding treaty on violence against women with its separate monitoring body?***

According to the World Health Organization (WHO), it is estimated that 35% of women worldwide have experienced either physical and/or sexual intimate partner violence or non-partner sexual violence.<sup>2</sup> The European Union Agency for Fundamental Rights conducted research across the 28 European Union Member States and found that 43% of women have experienced some form of psychological violence by an intimate partner in their lifetime.<sup>3</sup> Furthermore, WHO asserts that where a woman has been assaulted by her partner she is twice as likely to have an abortion, almost twice as likely to experience depression, and in some regions, 1.5 times more likely to acquire HIV, as compared to women who have not experienced partner violence.<sup>4</sup> Thus, the ramifications of this form of violence are far-reaching and have a detrimental impact on a woman's overall quality of life. Indeed, violence against women has been conceptualized by the former Special Rapporteur on

---

<sup>1</sup> The authors, Dr Yassin Brunger and Ms Eithne Dowds are academics at the School of Law Queen's University Belfast and are members of the Queen's University Belfast, Human Rights Centre. Their research specialises in gender-based and sexual violence in human rights and international criminal law.

<sup>2</sup> World Health Organisation, (2013) *Global and regional estimates of violence against women: prevalence and health effects of intimate partner violence and non-partner sexual violence*, p. 2.

<sup>3</sup> European Union Agency for Fundamental Rights (2014) *Violence against women: an EU-wide survey*, p. 71.

<sup>4</sup> World Health Organisation, (2013) *Global and regional estimates of violence against women: prevalence and health effects of intimate partner violence and non-partner sexual violence*, p. 2

violence against women, its causes and consequences, Ms Rashida Manjoo, as an obstruction to the realization of women's citizenship rights: that is the right to meaningful participation, autonomy and agency through membership in a community.<sup>5</sup>

Despite the knowledge that violence against women constitutes a global phenomenon, no separate legally binding treaty on violence against women exists. While violence against women has been recognized as a 'form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on the basis of equality with men' under the Convention for the Elimination of Discrimination against Women (CEDAW), as a consequence of General Recommendation 19,<sup>6</sup> there is no express mention of violence against women in the original text. Some regional systems have provided more specificity in human rights instruments such as The Council of Europe Convention on preventing and Combating Violence Against Women and Domestic Violence (also known as Istanbul Convention), the Inter American Convention on the Prevention, Punishment and Eradication of Violence Against Women (also known as The Belém do Pará Convention) and the Protocol to the African Charter on Human and People's Rights on the Rights of Women (also known as The Maputo Protocol).<sup>7</sup> However, such specific legal instruments are notably absent in other regions such as Asia and the Oceania. Moreover, the European, Inter American and African instruments contain different protections, both in terms of the individuals covered within the instruments and the prohibited acts, and the European Convention has been criticized for positioning domestic violence as a gender-neutral phenomenon which may serve to erase the ways gender violence disproportionately impacts women.<sup>8</sup>

A number of human rights concerns arise as a result of the inconsistent approach to violence against women across regional systems. Of primary concern is the threat to women's equal access

---

<sup>5</sup> United Nations General Assembly, *Violence Against Women, its causes and consequences* (1 September 2014) A/69/368, p. 4.

<sup>6</sup> UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979; UN Committee on the Elimination of Discrimination Against Women (CEDAW), CEDAW General Recommendations Nos. 19 and 20, adopted at the Eleventh Session, 1992 (contained in Document A/47/38), 1992, A/47/38.

<sup>7</sup> Council of Europe, Council of Europe Convention on preventing and combating violence against women and domestic violence, 11 May 2011, A/69/368; African Union, Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, 11 July 2003; Organization of American States (OAS), Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ("Convention of Belem do Para"), 9 June 1994.

<sup>8</sup> J. Goldscheid and D.J. Liebowitz, 'Due Diligence and Gender Violence: Parsing its Power and its Perils' (2015) 48 *Cornell International Law Journal*, 316; United Nations General Assembly, *Violence Against Women, its causes and consequences* (1 September 2014).

to justice.<sup>9</sup> As noted in CEDAW's General Recommendation on women's access to justice: 'The right to access to justice is multidimensional. It encompasses justiciability, availability, accessibility, good-quality and accountability of justice systems, and provision of remedies for victims'.<sup>10</sup> The lack of harmony among regional systems results in the unsatisfactory situation where the extent to which a woman may exercise her right to be free from violence and enjoy the full realm of inalienable, interdependent and indivisible human rights is dependent upon where she lives. Indeed, this lack of harmony is representative of the normative gap under international law, identified by Ms Rashida Manjoo, regarding violence against women,<sup>11</sup> and weakens the claim of the Human Rights Council that 'regional arrangements...should reinforce *universal* human rights standards, as contained in international human rights instruments'.<sup>12</sup> Thus, the universality of women's human right to be free from violence is called into question in the absence of an international legally binding instrument on the matter and the current divergence in regional systems.

In addition to the sources outlined above, there are numerous soft law sources and guidance documents which have been developed to tackle violence against women; such as the Declaration on the Elimination of Violence Against Women and the UN Handbook for Legislation on Violence Against Women.<sup>13</sup> However, as noted by Ms Rashida Manjoo in 2014, '[a]lthough soft laws may be influential in developing norms, their non-binding nature effectively means that states cannot be held responsible for violations'.<sup>14</sup> Thus, while the creation of soft law results in broader norm development and expansion, the lack of monitoring and reporting mechanisms, as well as the absence of clearly identified targets, is a problematic feature of soft law sources on violence against women.

---

<sup>9</sup> See, for example, articles 7 and 8 of the Universal Declaration of Human Rights, articles 2 and 14 of the International Covenant on Civil and Political Rights and articles 2 (2) and 3 of the International Covenant on Economic, Social and Cultural Rights.

<sup>10</sup> CEDAW, General recommendation on women's access to justice, 23 July 2015, CEDAW/C/GC/33, paragraph 1.

<sup>11</sup> Commission on the Status of Women 59th session, Statement by Ms. Rashida Manjoo, Special Rapporteur on Violence against women, its causes and consequences, (9 March 2015).

<sup>12</sup> Resolution adopted by the Human Rights Council 12/15. Regional arrangements for the promotion and protection of human rights (12 October 2009) A/HRC/RES/12/15, p. 2.

<sup>13</sup> United Nations General Assembly, Declaration on the Elimination of Violence against Women, 20 December 1993 A/RES/48/104; United Nations, *Handbook for Legislation on Violence Against Women*, Department Economic and Social Affairs Division for the Advancement of Women, (2010).

<sup>14</sup> United Nations General Assembly, Violence Against Women, its causes and consequences (1 September 2014) A/69/368, paragraph 59.

In light of this we believe that there is a need for a separate legally binding treaty on violence against women with its separate monitoring body. Indeed, CEDAW, the regional instruments, and the soft law sources provide the foundation from which to develop a comprehensive, specific, legally binding instrument on violence against women. Symbolically, an international treaty on violence against women would send a very clear message that the world will not tolerate violence against women. Practically, it would provide the means through which meaningful action in relation to the insidious problem of violence against women could be taken. Thus, a separate international treaty can galvanise the momentum for concerted action that seeks to reduce and response to violence against women.

***2. Do you consider that there is an incorporation gap of the international or regional human rights norms and standards?***

To answer this question, this submission examined the normative coverage of violence against women and mapped out the incorporation of international and regional human rights norms and standards. There is a clear fragmentation of international and regional human rights norms and standards that have been incorporated into national systems. The question of incorporation of these standards and norms requires a formalistic assessment of the actions of States and their obligations to incorporate into their domestic systems the norms set out in the international and regional treaty. More specifically, incorporation of international obligations will both create rights and duties under domestic law for State bodies.

The CEDAW has 187 ratifications, yet with the lack of any express mention of violence against women within the language of the treaty it relies on willingness and ability of States to implement the various recommendations put forward in General Recommendation 19 in particular to “take appropriate and effective measures to overcome all forms of gender-based violence whether by public or private act”.<sup>15</sup>

The Maputo Protocol, which currently has been ratified by 37 States out of the 54 Africa Union States, requires that “appropriate legislative, institutional and other measures” be undertaken in order to eliminate all forms of discrimination against women.<sup>16</sup> Moreover, in many countries, legal and institutional measures, such as laws prosecuting perpetrators of sexual violence (Kenya, Liberia), criminalizing domestic violence (Benin, Guinea Bissau, Angola, Namibia), prohibiting female genital mutilation (Ghana, Malawi, The Gambia) or establishing mechanisms mandated to

---

<sup>15</sup> Supra n 5.

<sup>16</sup> Supra n 6.

promote women's rights (Burkina Faso, Liberia),<sup>17</sup> have accompanied these ratifications there remains significant gaps in the incorporation of norms and standards to address particularities of violence against women.

It is concerning that 17 States including Sudan, Central African Republic and Egypt – countries which still face serious political crisis or situations of armed conflicts – still have not ratified the Protocol. Within these 17 States women continue to be the main targets of violence, discrimination and stigmatization.<sup>18</sup>

The Belém do Pará Convention, has a strong ratification record having been ratified by 32 States out of the 35 members of the Organization of American States (OAS).<sup>19</sup> On a normative level, the Belém do Pará Convention created a system of State obligations in the context of due diligence which is fundamental to the realization of women's rights to life free from violence. Articles 7 and 8 requires State action without delay to condemn, prevent, punish and eradicate all forms of violence against women.<sup>20</sup> The Inter-American Court of Human Rights has made clear that under the Belém do Pará Convention and the principle of due diligence States are required to adopt measures and provide an adequate legal framework for women's protection.<sup>21</sup>

The strength of the norms and standards within the Belém do Pará Convention is further reinforced by the Inter-American Court of Human Rights which highlighted that in cases of violence perpetrated against women, apart from their generic obligations under the American Convention, States also have a "heightened obligation" which can incur international responsibility under the Belém do Pará Convention, the purpose of which is to ensure the effective exercise and enjoyment of women's rights.. While there is evidence of legislative and administrative action that incorporates some of the norms and standards there remains gaps between the domestic laws,

---

<sup>17</sup> Justice Lucy Asuagbor, (Commissioner, Special Rapporteur on the Rights of Women in Africa), *Status of Implementation of the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa*, 60<sup>th</sup> Meeting Commission on the Status of Women (18 March 2016) <http://www.peaceau.org/uploads/special-rapporteur-on-rights-of-women-in-africa-presentation-for-csw-implementation.pdf>.

<sup>18</sup> The 18 States are: Algeria, Botswana, Burundi, Central African Republic, Chad, Egypt, Eritrea, Ethiopia, Madagascar, Mauritius, Niger, Sahrawi Arab Democratic Republic, Somalia, Sao Tome & Principe, Sudan, South Sudan, Tunisia.

<sup>19</sup> Canada, Cuba and the United States have not signed or ratified the Treaty.

<sup>20</sup> Supra n 6.

<sup>21</sup> Case of *González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, paragraphs 60-6

policies and practices of many states.<sup>22</sup> For example, in States with associated high prevalence of violence against women (such as Grenada, Haiti, Honduras) the significance of these gaps should be of paramount concern.<sup>23</sup>

On the European level the Istanbul Convention currently stands at 22 ratifications out of 47 Member States of the Council of Europe.<sup>24</sup> It builds on the case-law from the European Court of Human Rights and the Inter-American Court of Human Rights by incorporating the “due diligence” standard in the context of violence against women in Europe.<sup>25</sup> Although it stands as the most progressive example of human rights norms and standards on a regional level,<sup>26</sup> it is unclear the extent to which it will be incorporated domestically. There is some evidence of indirect normative adjustments being made in national systems, for instance in the United Kingdom (signatory),

---

<sup>22</sup> MESECVI (2012), Second Hemispheric Report on the Implementation of the Belém do Pará Convention <http://www.oas.org/en/mesecvi/docs/MESECVI-SegundoInformeHemisferico-EN.pdf> ; MESECVI (2014), *Second Follow-Up Report on the Recommendations of the Committee of Experts of the MESECVI*. Available at: <http://www.oas.org/en/mesecvi/docs/MESECVI-SegundoInformeSeguimiento-EN.pdf>

<sup>23</sup> In the Concluding Observations of CEDAW Committee identified that Grenada gaps in legislation on violence against women in particular marital rape, the restrictive definition of rape despite the adoption of the Domestic Violence Act (2010) and the National Domestic Violence and Sexual abuse Protocol (2011), Concluding Observations of the Committee on the Elimination of Discrimination against Women (21 February 2012) available at CEDAW/C/GRD/CO/1-5 <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-GRD-CO-1-5.pdf> . Haiti does not have specific legislation criminalizing rape, domestic violence, sexual harassment, or other forms of violence suffered by women. The shutdown of parliament in 2015 prevented any progress towards consideration of a draft law to address this gap in protection. HRW World Report 2016 <https://www.hrw.org/world-report/2016/country-chapters/haiti> ; In Honduras there have been reports that violent deaths amongst women has increased by 234% from 2005-2013, ‘Honduran women refuse to be silenced in the face of yet another setback’, The Guardian, Wednesday 18<sup>th</sup> March 2015 available at <https://www.theguardian.com/global-development/2015/mar/18/honduras-women-gladys-lanza-feminism-human-rights>.

<sup>24</sup> Supra n 6, Article 75(1) provides that ‘This Convention shall be open for signature by the member States of the Council of Europe, the non-member States which have participated in its elaboration and the European Union’

<sup>25</sup> *Velasquez Rodriguez v Honduras*, Inter-American Court of Human Rights, Series C No. 4 (1988), Judgment, 29 July 1988, para.172; *Opuz v Turkey* (Application No.33401/02), Judgment, 9 June 2009; *Gonzalez et al (Cotton Field) v Mexico*, Inter-American Court of Human Rights, Preliminary Objection, Merits, Reparations and Costs, Series C No. 205, Judgment, 16 November 2009; *Yildirim v Austria*, CEDAW Communication No.6/ 2005 (6 August 2007), *Goecke v Austria*, CEDAW Communication No.6/ 2005 (6 August 2007); *A.T. v Hungary*, CEDAW Communication No.2/2003 (26 January 2005); CEDAW General Recommendation No.28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (2010); See also the Human Rights Joint Committee – Sixth Report, Violence against women and girls (2015) available at <http://www.publications.parliament.uk/pa/jt201415/jtselect/jtrights/106/10602.htm>

<sup>26</sup> C. Chinkin, ‘Regional Approaches to Combating Violence against Women: the Istanbul Convention’ (4 February 2016) . Notes for a talk delivered at the Centre for Women, Peace and Security workshop ‘Tackling Violence Against Women: International and Regional Approaches’ LSE, London, UK available at <http://www.lse.ac.uk/WomenPeaceSecurity/pdf/2016/0204ChinkinVAW.pdf>.

legislative changes were made in order to comply with the Istanbul Convention (the criminalization of forced marriage).<sup>27</sup> Yet there remains a delay in the ratification of the treaty in the United Kingdom and thus the incorporation of the human rights norms and standards within the Istanbul Convention.

Academic research has shown that the increasing legitimacy of human rights principles proffered by world civil society places pressure on governments to improve their human rights practices whether they have ratified the treaties or not, but that countries' links to international society have a paradoxical positive impact.<sup>28</sup> Risse, Ropp, and Sikkink argue that "international norms can be internalized and implemented domestically by relying on "pressure from below" and "pressure from above".<sup>29</sup> For normative theorists, the fundamental motive behind human rights treaties is not rational adaptation, they claim, but transnational socialization.<sup>30</sup> The norms and standards have a causal influence on human rights regimes. The process of norm proliferation and socialization is aided by the human rights activism of nongovernmental organizations, which motivate international discourse on human rights, establish international networks of people and institutions to monitor violations, and to rally public opinion.<sup>31</sup>

The gaps and inconsistencies in terms of substance and coverage of the international and regional human rights norms and standards supports our view that there is a need for a separate international treaty on violence against women. Regionalization should not be used as a tool to deflect attention away from the globalization process. The positive developments of regional action in Europe, the Americas and Africa should instead be viewed as indicative of the existence and the growing nature of an international consensus to tackle systemic violence against women.

---

<sup>27</sup> Sections 120 and 121 of the Anti-social Behaviour, Crime and Policing Act 2014 criminalised the breaching of a forced marriage protection order and of using conduct which causes someone to enter into a forced marriage. Article 5 of The Anti-social Behaviour, Crime and Policing Act 2014 (Commencement No.2, Transitional and Transitory Provisions) Order 2014 brought these two sections into force on 16 June 2014.

<sup>28</sup> E M. Hafner-Burton and K. Tsutsui, "Human Rights in a Globalizing World: The Paradox of Empty Promises" (2005) 111(5) *American Journal of Sociology (AJS)* 1384 - 1385

<sup>29</sup> T.Risse and K Sikkink, "The socialization of international human rights norms into domestic practices: introduction" in T.Risse, S. C. Ropp and K. Sikkink, *The Power of Human Rights: International Norms and Domestic Change* (Cambridge University Press, 1999) 5

<sup>30</sup> J. Donnelly, "International Human Rights: A Regime Analysis", (1986) 40 *International Organization*, Volume 599-642; M. Finnemore and K. Sikkink, "International norm dynamics and political change" (1998) *International Organization*, 52(04), 887-917.

<sup>31</sup> O. Hathaway, "Do Human Rights Treaties Make a Difference?", (2002) 111 *The Yale Law Journal*, Volume, 1935-2042, 1957



### ***3. Do you believe that there is a lack of implementation of the international and regional legislation into the domestic law?***

A 2006 study by the United Nations expressed concern over the lack of implementation of international and regional norms regarding violence against women into domestic law.<sup>32</sup> In drawing upon the concluding comments of the CEDAW committee issued to 90 State parties between 2001 and 2005 it was noted that some domestic states lack specific legislation or legislative provisions to criminalize violence against women, particularly domestic violence, marital rape, incest, sexual harassment and traditional practices harmful to women.<sup>33</sup> Where legislation is provided, concerns were raised over the scope and coverage of the legislation and the discriminatory basis upon which some legislation was founded i.e., the use of the defence of “honour” in cases of violence against women and the related mitigation of sentences; provisions allowing mitigation of sentences in rape cases where the perpetrator marries the victim.<sup>34</sup> Beyond the existence of legislation, the study highlighted the lack of effective implementation of this legislation by domestic actors i.e., dismissive attitude of police, prosecutors and judges, as well as a lack of procedural measures to aid the implementation of the legislation.<sup>35</sup>

The normative gap created by the lack of adequate domestic law implementing human rights standards regarding violence against women may be lessened by General Recommendation 28 to CEDAW which imposes a due diligence obligation on State parties ‘to prevent, investigate, prosecute and punish such acts of gender-based violence’.<sup>36</sup> Indeed, it has been noted above that the due diligence standard has created heightened obligations in the Inter-American context. However, the due diligence standard is poorly understood by States in relation to violence against women and there is a lack of enforcement measures domestically.<sup>37</sup> The evolution of the standard in the context of violence against women is also dependent upon States *identifying* an instance as violence against women, which may not always occur. For instance, in *Caballero Delgado and Santana v. Colombia*, a woman was seen naked after being detained by armed forces; however, due to what the Court termed ‘vague’ witness testimony the Court did not include the dimension of nudity

---

<sup>32</sup> The Secretary-General’s in-depth study on all forms of violence against women (2006), A/61/122/Add.1.

<sup>33</sup> *Ibid*, paragraph 277.

<sup>34</sup> *Ibid*.

<sup>35</sup> *Ibid*, paragraph 278.

<sup>36</sup> UN Committee on the Elimination of Discrimination Against Women (CEDAW), General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, (16 December 2010), CEDAW/C/GC/28, paragraph 19.

<sup>37</sup> United Nations General Assembly, Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo (14 May 2013), A/HRC/23/49, para 66.

within the finding of torture or inhumane treatment.<sup>38</sup> Moreover, Ms Rashida Manjoo has noted that the absence of a ‘legally binding instrument under international law, specifically on violence against women, to effectively monitor State responsibility to act with due diligence in their efforts to respond to, prevent and eliminate all forms of violence against women’ is another barrier in the quest to end violence against women.<sup>39</sup> Furthermore, the standard itself, as currently interpreted, focuses on the measures and means taken by the State rather than the existence of a particular violation. Thus, where the perpetrator of violence is a non-state actor the State will not be responsible for the substantive violation but rather for a procedural failure (if there is found to be any) and the individual perpetrator is subject to a separate regime of responsibility. This separation of responsibility maintains a problematic dichotomy between the public and the private.<sup>40</sup> As noted by the former Special Rapporteur on violence against women, its causes and consequences, Ms. Yakin Ertürk, the due diligence standard remains ‘blind to structural inequalities and the complex and intersecting relations of power in the public and private spheres of life that lie at the heart of sex discrimination’.<sup>41</sup>

In light of the above we believe that the creation of international treaty on violence against women and a separate monitoring body is necessary to clarify state obligations in relation to the due diligence standard and to provide means of enforcement where States fail in this obligation. While there may be enforcement difficulties, as there is with any international treaty, the creation of an internationally binding treaty on violence against women containing a clear framework on the due diligence standard in the *specific* context of violence against women, will provide enforcement bodies with a clear foundation from which to ‘shame’ states into compliance.<sup>42</sup>

#### ***4. Do you think that there is a fragmentation of policies and legislation to address gender-based violence?***

Over the past three decades international law has developed rapidly in relation to violence against women. There have been key developments in international human rights law, international

---

<sup>38</sup> *Caballero Delgado and Santana v. Colombia* (Judgment) Inter-American Court of Human Rights Series C No. 31 (8 December 1995) 36, 38.

<sup>39</sup> United Nations General Assembly, Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo 14 May 2013, A/HRC/23/49, paragraph 42.

<sup>40</sup> A. J. Sennet, ‘*Lenahan (Gonzales) v. United States of America: Defining Due Diligence?*’ (2012) 53(2) *Harvard International Law Journal* 545.

<sup>41</sup> Special Rapporteur on Violence Against Women, The Due Diligence Standard as a Tool for the Elimination of Violence Against Women, (2006) U.N. Doc. E/CN.4/2006/61, paragraph 56.

<sup>42</sup> Y.M. Dutton, ‘Commitment to International Human Rights Treaties: The Role of Enforcement Mechanisms’, (2012) 34(1) *University of Pennsylvania Journal of International Law*, 31.

criminal law and international humanitarian law resulting in new understandings of the ways women are subject to violence across the globe.<sup>43</sup> The proliferation of law, however, does not necessarily mean more protection and may in reality be divisionary and indeed fragmentary.<sup>44</sup> The increased attention to violence against women in situations of conflict and mass violence in the international criminal context, for instance, has, to a certain extent, been accompanied by a flawed understanding of this violence as exceptional in nature. Thus, detaching this violence from the continuum of violence experienced by women which cannot be neatly separated into conflict and non-conflict.<sup>45</sup> The policy and legislative focus on violence against women in conflict has resulted in increased funding and actions in this area.<sup>46</sup> While well intended, the recognition of violence against women in conflict situations should not deflect from the needs of women on a daily basis and the dwindling resources available to them due to cuts in funding at the national level.<sup>47</sup>

The assessment of states compliance with human rights standards in the context of violence against women is also complicated as a result of fragmentation. For instance, the contributors to *The World's Women 2010* drew attention to the methodological challenges involved in producing global assessments of where there is little agreement regarding measurement standards or methods.<sup>48</sup>

---

<sup>43</sup> The Rome Statute for the International Criminal Court recognises an expansive list of sexual and gender-based: 'Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity' see UN General Assembly, Rome Statute of the International Criminal Court (last amended 2010), 17 July 1998, ISBN No. 92-9227-227-6, Article 7(1)(g), Article 8(b)(xxii), Article 8(e)(vi); K. Bennouna 'Do We Need New International Law to Protect Women in Armed Conflict?' (2007) 38(2) *Case Western reserve Journal of International Law* 363-391.

<sup>44</sup> B. Stark, 'International Law from the Bottom Up: Fragmentation and Transformation' (2013) 34(4) *Journal of International Law*, 711.

<sup>45</sup> F. Ní Aoláin, 'Political Violence and Gender in Times of Transition' (2006) 15(3) *Columbia Journal of Gender and Law*, 831; Cockburn, C. 'The Continuum of Violence: A Gender Perspective on War and Peace' in Giles, W. and Hyndman, J. (eds) *Sites of Violence: Gender and Conflict Zones* (University of California Press, 2004).

<sup>46</sup> See for instance UK Policy paper 2010 to 2015 government policy: sexual violence in conflict available at <https://www.gov.uk/government/publications/2010-to-2015-government-policy-sexual-violence-in-conflict/2010-to-2015-government-policy-sexual-violence-in-conflict> [last accessed 28/10/2016].

<sup>47</sup> Women's groups accuse Bahrain of cutting funds on political grounds 23 June 2016 available at <http://www.middleeasteye.net/news/womens-groups-accuse-bahrain-cutting-funding-political-grounds-1787893824> [last accessed 28/10/2016]; Nowhere to go: Sisters Uncut demand homes free from violence 17 October 2016 available at <http://www.redpepper.org.uk/nowhere-to-go-sisters-uncut-demand-homes-free-from-violence/> [last accessed 30/10/2016]; M. Coy, L. Kelly and J. Foord, The postcode lottery of Violence Against Women support services in Britain (2009) available at <http://www.refuge.org.uk/files/Map-of-Gapsreport-2009.pdf> [last accessed 30/10/2016].

<sup>48</sup> UN Department of Economic and Social Affairs *The World's Women 2010: Trends and Statistics* (2010) ST/ESA/STAT/SER.K/19, p. xii.

The creation of an international treaty on violence against women based on an understanding of the circularity of violence against women and the fact that ‘if men think of women as property, if violence at home or committed by family members is considered a private matter, if society continues to judge the conduct and dress of women in sexual violence cases, if the state fails to insist upon real and tangible equality for women in all fields – political, social, economic and cultural – and fails to engage with men in resolving the issue, then sexual violence in conflict and non-conflict will continue’,<sup>49</sup> will create the space to bring the core developments in the different international arenas together and reduce the current fragmentation of laws that exist.

***5. Could you also provide your views on measures needed to address this normative and implementation gap and to accelerate prevention and elimination of violence against women?***

Based on the evidence presented here the authors of this submission would make the following recommendations:

- Towards an International Treaty on Violence against Women

The establishment of an International Treaty would provide the opportunity to synthesize the legal obligations of States and the measures to prevent and eradicate violence against women; such as the adoption of legislation, and the creation of institutional mechanisms that enable women to report their experiences of violence and seek redress for the violations against them. The existence of regional instruments on violence against women should not discourage the establishment of an international treaty. Furthermore, as the mapping out exercise above has demonstrated there are normative, geographic and practical gaps within regional contexts in the protection of women against violence. Nonetheless the Istanbul Convention provides a model worthy of substantive consideration and can built upon when drafting an international treaty on violence against women

- Enhanced Capacity Building

An acute lack of resources and capacity within a national system can make it difficult for the States to prevent, protect against, and prosecute all forms of violence against women. Enhanced capacity building programmes would entail collaboration between international, regional and

---

<sup>49</sup> M. Rees and C. Chinkin ‘Why We Support the PSVI’ (17 June 2015) Women’s International League for Peace and Freedom 17 June 2015 available at <http://wilpf.org/why-we-support-the-psvi/> .

national bodies that aim to combat violence against women through strengthening technical and institutional capacities.

If you require any additional information, please do not hesitate to contact me.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Y Brunger'.

Dr Yassin Brunger  
Ms Eithne Dowds

School of Law, Queen's University Belfast, UK